

UNDERGROUND WATER CONSERVATION DISTRICTS—  
ORGANIZATION—POWERS

CHAPTER 306

H. B. No. 162

An Act amending Chapter 25, Acts of the Regular Session, Thirty-ninth Legislature, 1925, by adding a Section thereto providing for the creation and organization of underground water conservation districts to provide for the conservation, preservation, protection and recharging and the prevention of waste of underground water; prescribing the powers, functions and limitations of such districts; defining terms and prescribing standards to govern the operation of such districts and the adoption, promulgation and enforcement of rules and regulations thereof; recognizing individual ownership of underground water; authorizing the State Board of Water Engineers to designate underground water reservoirs and subdivisions thereto; providing for appeals from orders, rules, regulations and acts hereunder; containing a saving clause; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

Section 1. That Chapter 25, Acts of the Regular Session of the Thirty-ninth Legislature of the State of Texas, 1925, be and the same is hereby amended<sup>24</sup> by adding thereto Section 3c to provide as follows:

"Section 3c. A. Unless the context of this Section 3c indicates a different meaning, the words hereinafter defined when used in this Section 3c shall have the following meaning:

"(1) 'Board' is the State Board of Water Engineers.

"(2) 'District' is an Underground Water Conservation District which includes within its purposes and plans those functions authorized by the provisions of this Section 3c.

"(3) 'Underground water' is water suitable for agricultural, gardening, domestic or stock raising purposes, percolating below the earth's surface, and does not include defined subterranean streams or the underflow of rivers.

"(4) 'Underground water reservoir' is a specific subsurface water-bearing reservoir having ascertainable boundaries, and containing underground water capable of being produced from a well at the rate of not less than one hundred and fifty thousand (150,000) gallons a day.

"(5) 'Subdivision of an underground water reservoir' is that definable part of an underground water reservoir from which withdrawal of waters cannot measurably affect the underground water of any other part of such reservoir, based upon existing conditions and reasonably foreseeable conditions, at the time of the designation or alteration of such subdivision.

"(6) 'Waste' shall mean:

"(a) the withdrawal of underground water from an underground water reservoir at such a rate and in such amount so as to cause the intrusion therein of water not suitable for agricultural, gardening, domestic or stock raising purposes;

"(b) the flowing or producing of wells from an underground water reservoir when the water produced therefrom is not used for a beneficial purpose;

"(c) the escape of underground water from one underground water reservoir to any other reservoir not containing underground water, as defined in this Section 3c; and

<sup>24</sup> Vernon's Ann.Civ.St. art. 7880—3c.

"(d) the pollution or harmful alteration of the character of the underground water within the underground water reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata or from the surface of the ground.

"(7) 'Beneficial purpose' means the use of underground water for agricultural, gardening, domestic, stock raising, municipal or mining purposes, for exploring for, producing, handling and treating of oil, gas, sulphur or other mineral, for manufacturing, industrial, commercial, recreational or pleasure purposes or any other purpose that is useful and beneficial to the user thereof.

"(8) 'Segregated irrigated area' shall mean an irrigated area separated from other irrigated areas by at least five (5) miles of unirrigated lands.

"(9) 'Grazing land' shall mean land in tracts of not less than six hundred and forty (640) acres used exclusively for grazing purposes which is either unsuited for irrigation or land on which water is being produced for domestic and stock raising purposes only. Grazing land is defined above within the boundaries of an underground water control and improvement district created for the primary purpose of underground water conservation shall be excluded therefrom and shall not be subject to taxation by such District and shall not be liable for the bonded indebtedness of such District.

"B. Districts may hereafter be created for the conservation, preservation, protection, and recharging and the prevention of waste of the underground water of an underground water reservoir or subdivision thereof, defined and designated in accordance with the provisions of Subsection C of this Section 3c. To accomplish these purposes pursuant to Section 59 a, b, and c, of Article XVI of the Constitution of Texas, the administrative and procedural provisions as now or hereafter contained in Chapter 25, Acts of the Regular Session of the Thirty-ninth Legislature of the State of Texas, 1925, as amended, shall apply in so far as applicable to such Districts, but such Districts shall not be organized for any purposes except those set forth in this Section 3c.

"Such Districts shall and are hereby authorized to exercise any one or more of the following powers and functions:

"(1) to formulate, promulgate and enforce rules and regulations for the purpose of conserving, preserving, protecting and recharging the underground water of the underground water reservoir or subdivision thereof;

"(2) to formulate, promulgate and enforce rules and regulations to prevent the waste, as herein defined, of the underground water of the underground water reservoir or subdivision thereof;

"(3) to require permits for the drilling, equipping and completion of wells in the underground water reservoir and to issue such permits subject to such terms and provisions with reference to the drilling, equipping and completion thereof as may be necessary to prevent waste, as herein defined;

"(4) to provide for the spacing of wells producing from the underground water reservoir or subdivision thereof and to regulate the production therefrom so as to minimize as far as practicable the drawdown of the water table or the reduction of the artesian pressure; provided, however, the owner of the land, his heirs, assigns and lessees, shall not be denied a permit to drill a well on his land and produce underground water therefrom subject to rules and regulations promulgated hereunder to prevent waste, as herein defined;

"(5) to require records to be kept and reports to be made of the drilling, equipping and completion of wells into the underground water reservoir or subdivision thereof and the taking and use of underground

water therefrom; to require accurate drillers' logs to be kept of such wells and a copy thereof and of any electric logs which may be made of such wells to be filed with the District and the Board;

"(6) to acquire lands for the erection of dams and for the purpose of draining lakes, draws, and depressions, and to construct dams, drain lakes, depressions, draws and creeks and to install pumps and other equipment necessary to recharge the underground water reservoir or subdivision thereof but no such District having the powers granted in this Section 3c shall engage in the sale or distribution of surface or underground water for any purpose;

"(7) to cause to be made by registered professional engineers surveys of the underground water of the underground water reservoir or subdivision thereof and of the facilities for the development, production and use of such underground water, to determine the quantity thereof available for production and use and the improvements, developments and recharges needed for such underground water reservoir or subdivision thereof;

"(8) to develop comprehensive plans for the most efficient use of the underground water of the underground water reservoir or subdivision thereof and for the control and prevention of waste of such underground water, which plans shall specify in such detail as may be practicable the acts, procedure, performance and avoidance which are or may be necessary to effect such plans, including specifications therefor; to carry out research projects, develop information and determine limitations, if any, which should be made on the withdrawal of underground water from the underground water reservoir or subdivision thereof; to collect and preserve information regarding the use of such underground water and the practicability of recharge of the underground water subdivision thereof; to publish such plans and information, bring them to the notice and attention of the users of such underground water within the District, and to encourage their adoption and execution;

"(9) to enforce, by injunction, mandatory injunction or other appropriate remedy, in courts of competent jurisdiction, rules and regulations duly adopted and promulgated by such District; provided, that no rule or regulation shall be effective until a brief resume thereof has been published once a week for two consecutive weeks in one or more newspapers to give circulation within the District, and such rule or regulation is to be effective not less than fourteen (14) days after the date of the first publication.

"C. No petition for the creation of a District to exercise the powers and functions set forth in Subsection B of this Section 3c shall be considered by a Commissioners Court or the Board, as the case may be, unless the area to be included therein is coterminous with an underground water reservoir or subdivision thereof which theretofore has been defined and designated by the Board as an underground water reservoir or subdivision thereof. Such district, in conforming to a defined reservoir or subdivision, may include all or parts of a county or counties, municipal corporations or other political subdivisions, including but not limited to Water Control and Improvement Districts.

"It shall be the duty of the Board from time to time and in any event upon application by petition in the manner provided in Section 10 of the Acts of 1925, Thirty-ninth Legislature, Chapter 25, page 88, after notice and hearing as provided for in Section 15 and Section 21 (as amended), Acts of 1925, Thirty-ninth Legislature, Chapter 25, to designate underground water reservoirs and subdivisions thereof and thereafter as future conditions may require and factual data justify to alter the boundaries thereof; provided, however, such alteration shall not

invalidate the creation of any District theretofore created with the powers provided for in this Section 3c.

"D. The ownership and rights of the owner of the land, his lessees and assigns, in underground water are hereby recognized, and nothing in this Section 3c shall be construed as depriving or divesting such owner, his assigns or lessees, of such ownership or rights, subject, however to the rules and regulations promulgated pursuant to this Section 3c.

"It is specifically provided in this connection that:

"(1) the priorities, regulations and provisions of the law relating to the use of surface waters shall in no manner apply to underground water;

"(2) the provisions of Section 4a of Chapter 25, Acts of the Regular Session of the Thirty-ninth Legislature of the State of Texas, 1925, as amended by Chapter 107, Acts of the First Called Session of the Fortieth Legislature of the State of Texas, 1927, shall not apply in the exercise of the powers and functions conferred by this Section 3c;

"(3) nothing in this Section 3c shall be construed as applying to wells drilled, under permits granted by the Railroad Commission, of Texas, for oil, gas, sulphur, brine, or any of them, for core tests, for injection of gas, salt water or other fluid, or for any other purpose;

"(4) nothing in this Section 3c shall authorize or permit:

"(a) the requiring of a permit for the drilling or producing of a well drilled to supply water for the drilling of any one or more of the wells mentioned in (3) next preceding;

"(b) the requiring of a permit for the drilling or producing of a well drilled, completed and equipped so that it will not produce in excess of one hundred thousand (100,000) gallons of underground water per day; or

"(c) the restriction of the production from any well producing underground water to an amount less than one hundred thousand (100,000) gallons of underground water per day; provided, however, the wells mentioned in (a), (b) and (c) above shall be equipped and maintained so as to conform with the rules and regulations, promulgated by any District pursuant to this Section 3c and applicable to the underground water reservoir in which such wells are completed, requiring the installation of casing, pipe and fittings in wells so as to prevent the escape of underground water from one underground water reservoir to any other reservoir not containing underground water and so as to prevent the pollution or harmful alteration of the character of the underground water within any underground water reservoir, as herein defined.

"E. (1) Districts exercising the powers and functions provided for in this Section 3c shall include no segregated irrigated area unless a majority of the property taxpaying voters residing in such segregated irrigated area and voting at the election favor the inclusion of such area within the District.

"(2) Districts proposing to issue bonds for carrying out one or more of the powers and functions conferred by this Section 3c shall not be required to submit their plans to and secure approval of the Board as required by Section 139 of Chapter 25, Acts of the Regular Session of the Thirty-ninth Legislature of the State of Texas, 1925.

"(3) The directors of all Districts created to exercise the powers and perform the functions in this Section 3c provided shall be selected according to the 'precinct method,' as such method is defined and provided for in Senate Bill 247 enacted by the Forty-sixth Legislature, Regular Session, 1939, and all provisions of said Senate Bill 247 relating to the election of directors by the precinct method shall be applicable to Dis-

tricts created under this Section 3c; provided, however, in the creation of precincts for the election of directors of such a District, if any portion of a municipal corporation is a part of one precinct, then no portion of such municipal corporation shall be included in any other precinct; provided further however, that a municipal corporation having a population of more than two hundred thousand (200,000) persons according to the last preceding Federal Census may be included in not more than two (2) precincts.

"(4) At any election for the creation of such Districts or for issuing bonds or otherwise lending the credit of the District, only the property taxpaying residents of the District who have duly and personally rendered their property for taxation and which property appears on the rendered roll and who are otherwise qualified shall be entitled to vote

"F. Any interested person, firm, corporation or association of persons affected by the provisions of this Section 3c or by any rules, regulations or orders made or promulgated by a District hereunder or by any act of the Board pursuant hereto and who may be dissatisfied therewith shall have the right to file a suit in a court of competent jurisdiction in any county in the State of Texas in which such District or any part thereof is located if the suit is against a District or its directors and in a court of competent jurisdiction in Travis County, Texas, if the suit is against the Board, to test the validity of this Section 3c, and such rules, regulations or orders or any of them or any act of the Board. Such suit shall be advanced for trial and be determined as expeditiously as possible, and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the court. In all such trials the burden of proof shall be upon the party complaining of such law, rules, regulations or orders or act of the Board, and such law, rules, regulations or orders or act of the Board so complained of shall be deemed prima-facie valid but the trial shall be de novo, and the court shall determine independently all issues of fact and of law with respect to the validity and reasonableness of the law, rules, regulations or orders or acts of the Board complained of. The provisions of this Subsection shall be cumulative of all rights of court action by the affected parties and shall not impair or restrict their right to equitable relief.

"G. No District created under this Section 3c shall have the power to levy or collect a tax for any purpose to exceed fifty cents (50¢) on the One Hundred Dollars (\$100) assessed valuation on property in the District subject to taxation.

"H. Any such District may be dissolved in the manner provided by Section 10 of Chapter 280, Acts of 1929, Forty-first Legislature, Regular Session, regardless of whether or not such District may have outstanding indebtedness at the time of dissolution. In the event such District shall have outstanding bonds or other indebtedness maturing beyond the current year in which such dissolution occurs, the Commissioners Court of the County in which the District is situated shall levy and cause to be collected as county taxes are assessed and collected, sufficient taxes on all taxable property within such District to pay the principal and interest on such indebtedness when due. This paragraph shall not apply to Districts composed of territory in more than one (1) county."

Sec. 2. If any section, sentence, clause, or part of this Act shall, for any reason, be held invalid, such decision shall not affect the remaining portions of this Act, and it is hereby declared to be the intention of this Legislature to have passed each sentence, section, clause or part thereof irrespective of the fact that any other sentence, section, clause or part thereof may be declared invalid.

Sec. 3. The fact that it is imperative that the underground water

reservoirs of the State be protected from waste and pollution creates an emergency and an imperative public necessity that the Constitutional Rule requiring that a bill be read on three separate days in each House be suspended, and said Rule is suspended, and that this Act be put to passage on the first reading thereof and further that this Act take effect immediately upon its passage and the approval by the Governor, and it is so enacted.

Passed the House, April 25, 1949: Yeas 111, Nays 11; House concurred in Senate amendments, May 23, 1949: Yeas 117, Nays 0; passed the Senate, as amended, May 19, 1949: Yeas 27, Nays 1.

Approved June 2, 1949.

Effective June 2, 1949.

## CITIES OF 175,000 TO 240,000—POLICE OFFICERS' PENSION SYSTEM

### CHAPTER 307 <sup>25</sup>

H. B. No. 331

An Act establishing a Police Officers' Pension System in all cities of this State having a population of not less than one hundred and seventy-five thousand (175,000) inhabitants, nor more than two hundred and forty thousand (240,000) inhabitants, according to the last preceding or any future Federal Census; providing a saving clause; repealing all laws or parts of laws in conflict herewith; and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

Section 1. There is hereby created in this State a Police Officers' Pension System in all cities having a population of not less than one hundred and seventy-five thousand (175,000) inhabitants, nor more than two hundred and forty thousand (240,000) inhabitants, according to the last preceding or any future Federal Census; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population bracket as herein prescribed, and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population bracket.

#### Definitions.

Sec. 2. The following words and phrases when used in this Act are defined as follows, to wit:

(a) "Pension System" means the retirement, allowance, disability and pension system for employees of any Police Department coming within the provisions of this Act.

(b) "Member" means any and all employees in the Police Department who are engaged in law enforcement duties except special officers, part-time officers, janitors, car washers, cooks, and secretaries.

(c) "Pension Board" or "Board" means the Pension Board of the Pension System created under the Act for the purpose of administering the Pension System.

(d) "Service" means the services and work performed by a person employed in the Police Department.

(e) "Pension" means payments for life to the Police Department mem-

<sup>25</sup> Vernon's Ann.Civ.St. art. 6243i.